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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 1853 of 2006

Date of decision: 20.4.2007

Bharat Bhushan **...Petitioner**

Versus

State Bank of India and another **...Respondents**

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Salil Sagar, Advocate for the petitioner
Mr.A.P.Jagga, Advocate for respondent no.1
Mr.L.M.Suri, Senior Advocate with
Ms. Radhika Suri, Advocate for respondent no.2.

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RAJESH BINDAL, J.

By filing the present petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issuance of a direction to the respondents for consideration and approval of offer for One Time Settlement made by him as per policy framed by the Reserve Bank of India.

Briefly the facts, as noticed in the petition, are that against a cash credit facility availed by Anmol Agro India Ltd. (for short 'the loanee') from State Bank of India (for short 'the bank') on January 27, 1988, the petitioner stood as guarantor to secure the loan. The petitioner mortgaged his immovable property situated at Kaithal. The initial cash credit facility allowed to the loanee was Rs. 50 lacs. However, it was lateron extended to Rs. 2.60 crore. The petitioner was guarantor to the extent of original limit granted to the loanee. Due to non-payment of the loan raised by the loanee, the bank filed an application before the Debt Recovery Tribunal (for short 'the DRT') for recovery of Rs. 3,64,08,131.92 paise. Keeping in view the terms of the guarantee deed signed by the

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petitioner, a decree of Rs. 58,00,350.92 paise was passed against the petitioner as guarantor. In pursuance to recovery certificate the mortgaged property of the petitioner was auctioned for Rs. 30,12,000/-. The proceedings of auction are yet to attain finality as in the objections filed by the petitioner, the sale was set aside by the DRT against which further appeal, filed by the auction-purchaser before the Debt Recovery Appellate Tribunal, is pending. The claim made in the petition is that in terms of One Time Settlement Scheme formulated by the Reserve Bank of India, which is binding on all public sector banks, the petitioner is entitled to settlement of balance of his due under the scheme. Copy of the guidelines issued by the Reserve bank of India on September 3, 2005 is placed on record as Annexure P-1. The proposal made by the loanee under the signature of the petitioner for One Time Settlement on September 5, 2005 is also placed on record by the petitioner as Annexure P-2. The petitioner has further referred to Chapter 27 of the policy circulated by the Reserve Bank of India, which provides for prudential norms on income recognition, asset classification and provisioning. Further request made by the petitioner for One Time Settlement on November 28,2005 is also placed on record as Annexure P-6.

In response to the petition, learned counsel for the bank submitted that both the policies, as are sought to be relied upon by the petitioner for One Time Settlement of the dues against the petitioner, are not applicable. He submitted that in terms of para 2 of the guidelines issued by the Reserve Bank of India on September 3, 2005, it is categorically provided that same are not applicable in case of wilful default, fraud and malfeasance. Relevant part thereof is extracted below:-

> "The guidelines will not, however, cover cases of wilful default, fraud and malfeasance. Banks shall identify cases of wilful default, fraud and malfeasance and initiate prompt action."

By referring to the findings recorded by the Tribunal, in the order passed by it, it was submitted that in the case in hand the loanee had played a fraud for which a FIR was also lodged and the matter was under

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investigation through Central Bureau of Investigation. The relevant facts noticed by the Tribunal in its order dated May 28, 2002 are extracted below:-

> "During the currency of the account, it is alleged that the defendant no.2 presented on 2.3.1998 three cheques issued by M/s Rice & General Mills, Kaithal and drawn on Central Bank of India, Kaithal. The defendant no.2 assured and induced the bank to pay the amount against those cheques as sufficient balance was available in the account of the drawer firm which was further stated to be their own firm only. Against the said cheques plaintiff bank released Rs. 260.00 lacs by crediting the same in the account of defendant no.1. On the same date, the defendant no.2 issued four cheques, copies of which are enclosed as Ex. A/21 to A/24 and the entire amount was withdrawn. On 2.3.1998, the cheques were returned with the memo of 'insufficient funds' in the account of the drawer. It is further alleged that the defendants No.1 to 4 knew well about the insufficiency of the balance in that account and thus they wrongly induced the bank and thereby the bank was cheated. An FIR was also lodged with the Police Station City, Kaithal which was being investigated by Central Bureau of Investigation, New Delhi under the directions of Hon'ble Punjab and Haryana High Court."

By referring to terms of eligibility in Annexure P-3, guidelines issued by the Reserve Bank of India in 1982, it was submitted that as per eligibility criteria laid down therein, it was mentioned that the same was applicable only in the case of multiple banking accounts/syndication/consortium accounts with outstanding exposure of Rs. 20 crore and above by banks and institutions and the same does not apply to accounts involving only one financial institution or one bank. Learned counsel for the bank has further referred to a circular issued by the Bank on 10.1.2006 and submitted that as per the latest guidelines in the accounts

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where decrees have already been passed and recovery certificates issued, the same will not be covered under the RBI OTS scheme.

We have heard learned counsel for the parties and with their assistance perused the paper book.

Learned counsel for the petitioner at the time of arguments could not dispute the factual and legal position as submitted by learned counsel for the Bank to the effect that One Time Settlement schemes sought to be relied upon by the petitioner are, in fact, not applicable to him. It could not be disputed that loanee in the present case had committed fraud with the bank and the petitioner stood guarantor for part of the sum advanced to the loanee. Further he could not dispute that in terms of the eligibility criteria laid down in 1982, the loanee was not entitled to any benefit as the same did not apply to the loans due from a single institution/bank and still further even as per latest guidelines issued by the Bank the cases where the decrees have already been passed by the Tribunal, policy of OTS was not at all applicable. Faced with this situation, the only contention raised by learned counsel for the petitioner is that this court in exercise of equity jurisdiction should come to the rescue of the petitioner, who has already lost his property in the process, the same having been sold by the bank for recovery of amount due from the petitioner as per the decree. The contention raised by the petitioner is not at all convincing. Under Article 226 of the Constitution of India, this Court does not exercise any power to waive off loans raised by the parties or liabilities incurred by the guarantors of the loan raised, that too, in cases where the decrees have been passed. The policy sought to be relied upon by the petitioner are not applicable to him.

In this view of the matter, we do not find any merit in the present petition. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

April 20 , 2007 **(M.M.Kumar)**
Pka **Judge**

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